IN THE UNITED STATES ARMY FIRST JUDICIAL CIRCUIT

UNITED STATES v.))))	DEFENSE RESPONSE TO PROSECUTION NOTIFICATION TO THE COURT OF ITS POSITION ON A CONDITIONAL PLEA
MANNING, Bradley E., PFC)	
U.S. Army, (b) (6))	
Headquarters and Headquarters Company, U.S.)	
Army Garrison, Joint Base Myer-Henderson Hall,)	DATED: 17 November 2012
Fort Myer, VA 22211)	

RELIEF REQUESTED

1. The Defense requests the Court to preserve the litigated speedy trial motion issues currently before the Court and still accept PFC Manning's proffered pleas during the 10 to 14 December Article 39(a) session.

EVIDENCE

2. The Defense does not request any witnesses or evidence for this motion.

FACTS AND ARGUMENT

- 3. The timing of the speedy trial motion argument has been delayed due to the need to obtain responses to interrogatories from the trial counsel and from the original classification authorities. Due to required delay, the Court is in the position of accepting a plea of guilty from PFC Manning prior to its ruling on the litigated speedy trial motions. The Defense had previously understood that the parties and Court agreed that due to the need to delay the speedy trial motion arguments, the Court would still consider and rule on the litigated speedy trial issues even after accepting a plea from PFC Manning.
- 4. During an R.C.M. 802 session on 7 November 2012, the Court indicated that it believed the R.C.M. 707 issues would be waived by a plea of guilty. The Defense articulated that it believed the parties and Court agreed to treat this issue similar to a conditional plea of guilty. After the

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¹ The Speedy Trial Motion was originally supposed to be completed during the 29 October through 2 November Article 39(a) session.

- R.C.M. 802 issue, the Defense discussed the issue with trial counsel. The Defense informed the trial counsel that it believed that the speedy trial issues were only being preserved for the Court's consideration at that trial stage. The Defense was not arguing that the R.C.M. 707 issue should be preserved for appellate review. The Defense agrees that a plea of guilty waives any R.C.M. 707 speedy trial issue on appellate review. *See* R.C.M. 707(e) (such a waiver would not apply to an Article 10 motion). However, the R.C.M. 707(e) waiver should not be applied at the trial stage when the issue is still before the Court and the parties have agreed that any plea should not waive the issue for consideration by the Court. As such, even after an acceptance of a plea of guilty, this Court should still consider and rule on the litigated speedy trial motion.
- 5. Should the Court determine that it does not have the authority to preserve the R.C.M. 707 issue for its consideration after an accepted plea of guilty, the Defense would join the United States in requesting that any plea be considered after the Court rules on the litigated speedy trial motion. Given our current trial calendar, the Defense recommends that acceptance of a plea of guilty by PFC Manning be moved to the 14 to 18 January 2013 session.

CONCLUSION

6. The Defense requests the Court to preserve any speedy trial issues currently before the Court and accept PFC Manning's proffered pleas during the 10 to 14 December Article 39(a) session. If the Court does not believe it has the authority to preserve the R.C.M. 707 issue for its consideration after an accepted plea of guilty, the Defense requests that the acceptance of PFC Manning's plea be moved to the 14 to 18 January 2013 session.

Respectfully submitted,

DAVID E. COOMBS Civilian Defense Counsel